CERTIFICATE

Supreme Court of the United States

OCTOBER TERM, 1932

No. 728

THOMAS S. WILLIAMS

vs.

THE UNITED STATES

ON CERTIFICATE FROM THE COURT OF CLAIMS

FILED FEBRUARY 24, 1933

(37,425)

(37,425)

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[fol. 1]

IN COURT OF CLAIMS OF THE UNITED STATES

No. 42313

THOMAS S. WILLIAMS

v.

THE UNITED STATES

STATEMENT OF FACTS AND CERTIFICATE

Messrs. George A. King, George R. Shields, and Herman J. Galloway appeared for the plaintiff.

Messrs. Charles F. Kincheloe and H. B. Holland appeared for the defendant.

Before Acting Chief Justice Green, Judge Littleton, Judge Whaley (Judge Williams Taking no Part; Chief Justice Booth Taking no Part on Account of Illness)

The Court of Claims hereby certifies that the record of the above-entitled case now pending before it discloses the following:

The plaintiff, Thomas S. Williams, has duly filed his petition in the Court of Claims on the eighth day of February, 1933, in which he claims and asks judgment against the United States for the sum of $1,458.33, as salary due him from July 1, 1932, to January 31, 1933, all of which will more particularly appear from his said petition, a copy of which accompanies this certificate and is marked "Exhibit A".

The petition of the plaintiff, among other things, alleges [fol. 2] that on November 1, 1929, he was appointed by the President of the United States, a Judge of the Court of Claims by and with the consent of the Senate; that he took the oath of office and entered on duty on November 11, 1929, and has continuously since that date and still is exercising the duties and powers of a Judge of the Court of Claims.

From and after the date of his appointment and entry upon his duty, he received a salary as Judge of the Court of Claims at the rate of $12,500 a year until June 30, 1932, and this salary was paid pursuant to the Act of December

13, 1926, Ch. 6, Sec. 1, 44 Stat. 919, "An Act to fix the salaries of certain judges of the United States", providing as follows: "To the Chief Justice of the Court of Claims and to each of the other judges thereof the sum of $12,500 per year."

From and after July 1, 1932, he has been paid only at the rate of $10,000 a year owing to a ruling of the Comptroller General of the United States that the salary of a Judge of the Court of Claims is reduced to that amount by the provisions of Part II of the Act of June 30, 1932, "Making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933", etc., Ch. 314, 47 Stat. 382, 399-403.

The amount of difference in said salary between the legal rate of $12,500 and the lesser amount paid of $10,000 a year amounts, from July 1, 1932, to January 31, 1933, to $1,458.33, [fol. 3] being the amount which he claims.

The petition further alleges that plaintiff is advised by counsel and believes that by means of no other proceeding or in no other court can he sue to recover the salary herein claimed or obtain an authoritative definition of the status of the Court of Claims.

That his claim is based upon the following, among other, provisions of the Constitution and statutes of the United States:

Constitution: Article I, Section 8, Paragraph 9, providing that "The Congress shall have power," among other things, "To constitute tribunals inferior to the Supreme Court."

Article III, Section 1, providing:

"The judicial power of the United States shall be vested in one Supreme Court, and such inferior courts as Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office."

Article III, Section 2, providing that "The judicial power shall extend", among other things "to controversies to which the United States shall be a party."

The Act of February 24, 1855, creating the Court of Claims; the Act of March 3, 1863, conferring upon the Court of Claims the power to enter final judgment upon claims against the United States; the Act of March 12, 1863; the Act of March 17, 1866; the Act of May 9, 1866; the Act [fol. 4] of March 3, 1887, commonly known as the Tucker Act, entitled "An Act to provide for the bringing of suits against the Government of the United States", conferring jurisdiction upon the Court of Claims, among other things, to hear and determine "claims founded upon the Constitution of the United States or any law of Congress".

Also the Judicial Code, so far as it relates to the Court of Claims; the Act of December 13, 1926, to which reference has hereinabove been made; and the Act of July 1, 1932, making appropriation for the payment of the salaries of the Judges of the Court of Claims for the year ending June 30, 1933.

That plaintiff was informed that about the thirteenth day of July, 1932, the Comptroller General of the United States held that the Court of Claims as well as certain courts of the District of Columbia are "legislative" rather than "constitutional" courts, and that the compensation of the Judges thereof might constitutionally be diminished during their term of office.

That plaintiff is the owner of the claim of which there has been no assignment or transfer and has at all times borne true allegiance to the Government of the United States and never in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and is a citizen of the United States.

To this petition, the defendant has filed a demurrer on the following grounds:

"1. The petition does not state a cause of action against [fol. 5] the defendant within the jurisdiction of this Court.

2. The petition does not state a cause of action against the defendant.

3. The defendant specially demurs to said petition for the reason that the judges of the Court of Claims of the United States are not judges of 'inferior courts' within the meaning of Section 1 of Article 3 of the Constitution of the United States, and are, therefore, not 'judges whose

compensation may not, under the Constitution, be diminished during their continuance in office' within the meaning of Section 107 (a) (5) of the Act of June 30, 1932, c. 314, 47 Stat. 382, 402."

The defendant, by the filing of this demurrer, admits the facts stated in the petition to be true, and upon the record before it the Court finds it necessary for a proper disposition of the case that certain constitutional questions should be determined. These constitutional questions are as follows:

QUESTIONS CERTIFIED

I. Does Section 1, Article III, of the Constitution of the United States apply to the Court of Claims and forbid a reduction of the compensation of the Judges thereof during their continuance in office?

II. Does the provision of Section 2, Article III, of the Constitution, wherein it is stated that "The Judicial Power shall extend * * * to controversies to which the United States shall be a party", apply to the Court of Claims, and does this provision authorize the creation and establish-
[fol. 6] ment of that Court?

III. Can the compensation of a Judge of the Court of Claims be lawfully diminished during his continuance in office?

It is respectfully requested that the Supreme Court of the United States give appropriate instructions on the above questions and certify and transmit the same to the Court of Claims of the United States for its guidance in the further progress of the case.

Wm. R. Green, Acting Chief Justice. Benjamin H. Littleton, Judge. Richard S. Whaley, Judge.

[fol. 7] EXHIBIT "A" TO CERTIFICATE

IN THE COURT OF CLAIMS

No. 42313

THOMAS W. WILLIAMS

v.

THE UNITED STATES

PETITION—Filed February 8, 1933

To the Honorable the Court of Claims:

I. The plaintiff was on the 1st day of November, 1929, appointed by the President of the United States, by and with the advice and consent of the Senate, a judge of the Court of Claims. He took the oath of office and entered on duty on the 11th day of November, 1929, and has been continuously since that date and still is exercising the duties and powers of a judge of the Court of Claims.

II. From and after the date of his appointment and entry upon duty he received a salary as judge of the Court of Claims at the rate of $12,500 a year, prescribed by law, until the 30th day of June, 1932.

From and after July 1, 1932, he has been paid only at the rate of $10,000 a year, owing to a ruling of the Comptroller General of the United States that the salary of a judge of the Court of Claims is reduced to that amount by the provisions of Part II of the act of June 30, 1932, "Making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933," etc., Ch. 314, 47 Stat. 382, 399-403.

[fol. 8] The amount of difference in said salary between the legal rate of $12,500, and the lesser amount paid at $10,000 a year, amounts from July 1, 1932, to January 31, 1933, to $1,458.33, which amount he claims.

III. This suit is brought by plaintiff with reluctance to sue in the court of which he is a member. He sues principally to obtain an authoritative decision in regard to the status of the Court of Claims as an inferior court of the United States, the compensation of whose members may

not constitutionally be diminished during their continuance in office.

IV. Plaintiff is advised by counsel and believes that by means of no other proceedings or in no other court can he sue to recover the salary herein claimed or obtain an authoritative definition of the status of the Court of Claims.

V. This claim is based upon the following, among other, provisions of the Constitution and statutes of the United States:

Constitution: Article I, Section 8, Paragraph 9, providing that "The Congress shall have power," among other things, "To constitute tribunals inferior to the Supreme Court."

Article III, Section 1, providing:

"The judicial power of the United States shall be vested in one Supreme Court, and such inferior courts as Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office."

[fol. 9] Article III, Section 2, providing that "The judicial power shall extend," among other things "to controversies to which the United States shall be a party."

Act of February 24, 1855, Ch. 122, 10 Stat. 612, "An Act to establish a court for the investigation of claims against the United States," creating the Court of Claims.

Act of March 3, 1863, Ch. 92, 12 Stat. 765, "An act to amend 'An Act to establish a court for the investigation of claims against the United States, approved February 24, 1855,' " conferring upon the Court of Claims the power to enter final judgments.

Act of March 12, 1863, Ch. 120, 12 Stat. 820, conferring upon said court jurisdiction of all claims for abandoned or captured property in any State or Territory designated as in insurrection against the Government of the United States and providing for judgments in favor of owners of such property for the proceeds thereof.

Act of March 17, 1866, Ch. 19, 14 Stat. 9, "An Act in relation to the Court of Claims," repealing the provision for estimate or revision by the Secretary of the Treasury over

judgments of the Court of Claims and providing for appeal to the Supreme Court from such judgments.

Act of May 9, 1866, Ch. 75, 14 Stat. 44, an act extending the jurisdiction of said court to claims of any paymaster or quartermaster, etc., or other disbursing officer of the United States for relief from responsibility for Government funds, etc.

Act of March 3, 1887, commonly known as the Tucker Act, Ch. 359, 24 Stat. 505, "An Act to provide for the bringing of suits against the Government of the United States," redefining the jurisdiction of the Court of Claims and conferring upon it jurisdiction, among other things, "of claims [fol. 10] founded upon the Constitution of the United States or any law of Congress," etc.

Judicial Code, Ch. 7, relating to the Court of Claims, particularly Section 136 thereof, now included in the United States Code, Title 28, as Section 241, providing that the Court of Claims shall consist of a Chief Justice and four judges, all to be appointed by the President by and with the advice and consent of the Senate, and to hold their offices during good behavior.

Act of December 13, 1926, Ch. 6, Section 1, 44 Stat. 919, "An Act to fix the salaries of certain judges of the United States," providing as follows: "To the Chief Justice of the Court of Claims and to each of the other judges thereof the sum of $12,500 per year."

Act of July 1, 1932, Ch. 361, 47 Stat. 475, 491, making appropriations for the Departments of State and Justice and for the Judiciary, etc., for the fiscal year ending June 30, 1933, in which appropriation is made for payment of the salaries of the Chief Justice and the four judges of the Court of Claims at $12,500 each a year.

VI. No action has been had on said claim in Congress. The only action bearing on this question of which plaintiff is informed is that on or about the 13th day of July, 1932, the Comptroller General of the United States held that the Court of Claims, as well as the higher courts of the District of Columbia, are "legislative" rather than "constitutional" courts and that the compensation of the judges thereof might constitutionally be diminished; no person other than the plaintiff is the owner thereof or interested therein; no assignment or transfer of this claim, or of any

part thereof or interest therein, has been made; the plaintiff is justly entitled to the amount herein claimed from the [fol. 11] United States, after allowing all just credits and offsets; the plaintiff has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government. The plaintiff is a citizen of the United States. The plaintiff claims as due him from July 1, 1932, to January 31, 1933, the sum of $1,458.33.

Thomas S. Williams. George A. King, George R. Shields, Herman J. Galloway, Attorneys for Plaintiff.

Duly sworn to by Thomas S. Williams. Jurat omitted in printing.

[fols. 12 & 13] CLERK'S CERTIFICATE

I, Willard L. Hart, Chief Clerk of the Court of Claims of the United States, do hereby certify that the foregoing certificate in the case of Thomas S. Williams v. The United States, No. 42,313, was duly filed and entered of record in my office by order of said court, and as directed by said court, the said certificate is by me transmitted to the Supreme Court of the United States for its action thereon.

In testimony whereof I hereunto subscribe my name and affix the seal of the Court of Claims of the United States, at my office in Washington, D. C., this 24th day of February, A. D. 1933.

Willard L. Hart, Clerk Court of Claims of the United States. (Seal Court of Claims.)

Endorsed on cover: File No. 37,425. Court of Claims. Term No. 728. Thomas S. Williams vs. The United States. Certificate. Filed February 24, 1933. File No. 37,425.